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Filing date: **12/02/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Strike King Lure Company		
Entity	Corporation	Citizenship	Tennessee
Address	466 Washington St. Collierville, TN 38017-2918 UNITED STATES		

Attorney information	Russell H. Walker Walker, McKenzie & Walker, P.C. 6363 Poplar Ave., Suite 318 Memphis, TN 38119-4899 UNITED STATES rwalker@walkermckenzie.com, docket@walkermckenzie.com Phone:901-685-7428 ext 25
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Registration Subject to Cancellation

Registration No	3500147	Registration date	09/09/2008
Registrant	WYMAN VON MOHR & ASSOCIATES 4727 YACHTSMAN'S DRIVE AMELIA ISLAND, FL 32034 UNITED STATES		

Goods/Services Subject to Cancellation


Class 028. First Use: 2006/11/14 First Use In Commerce: 2006/11/14
All goods and services in the class are cancelled, namely: Fishing rods

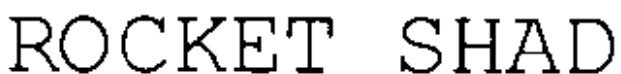
Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77944567	Application Date	02/25/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ROCKET SHAD		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 028. First use: First Use: 1999/07/31 First Use In Commerce: 1999/07/31 Fishing lures

U.S. Registration No.	2464463	Application Date	07/07/1999
Registration Date	06/26/2001	Foreign Priority Date	NONE
Word Mark	ROCKET SHAD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1999/07/31 First Use In Commerce: 1999/07/31 FISHING LURES		

Attachments	77944567#TMSN.jpeg (1 page)(bytes) 75750771#TMSN.gif (1 page)(bytes) 99059B_Petition_for_Cancellation.pdf (7 pages)(130893 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Russell H. Walker/
Name	Russell H. Walker
Date	12/02/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re: Trademark Registration of Wyman von Mohr & Associates
For the Mark: ROCKET FISHING ROD
Registration No.: 3,500,147
Registered: September 9, 2008
Int'l Class(es): 28

Strike King Lure Company)	Attorney Docket No. 99,059B
(a Tennessee corporation),)	
)	
Petitioner,)	
)	
v.)	TTAB Cancellation No. _____
)	
Wyman von Mohr & Associates,)	Attorney Docket No. 5369-92
)	
Registrant.)	

PETITION FOR CANCELLATION

Petitioner, Strike King Lure Company, a corporation duly organized and existing under the laws of the State of Tennessee, having a place of business at 466 Washington St., Collierville, Tennessee 38017-2918, believes that it is or will be damaged by Registration No. 3,500,147, and hereby petitions to cancel the same.

As grounds for cancellation it is alleged that:

1. Petitioner is a market leader in the United States in the field of fishing lures and related goods.

2. Petitioner has adopted and continuously used the trademark ROCKET SHAD ("Petitioner's Mark") in commerce since at least as early as July 31, 1999, to the present, on or in connection with fishing lures.

3. Petitioner has not abandoned the mark ROCKET SHAD.

4. Petitioner is the owner of U.S. Trademark Registration 2,464,463 (registered June

1 26, 2001) (hereinafter, “Petitioner’s Registration”) for the mark ROCKET SHAD for fishing
2 lures in International Class 28, the mark ROCKET SHAD, and the goodwill of the business
3 associated therewith.

4 5. Petitioner’s Registration issued from U.S. Intent-to-Use Trademark Application
5 75/750771 (filed July 7, 1999).

6 6. Upon issuance of Petitioner’s Registration to Petitioner on June 26, 2001, Petitioner
7 obtained a constructive date of first use in commerce of July 7, 1999, for its mark
8 ROCKET SHAD.

9 7. Petitioner’s Registration became canceled in March 2008 for Petitioner’s
10 inadvertent failure to file a Declaration of Continued Use under Section 8 of the Trademark Act.

11 8. Upon discovering the cancellation of Petitioner’s Registration, Petitioner filed U.S.
12 “use” Trademark Application 77/944567 (filed February 25, 2010) to reinstate its registration for
13 its ROCKET SHAD mark for the same goods, namely, fishing lures in International Class 28.

14 9. Upon information and belief, Registrant, Wyman von Mohr & Associates, is an
15 unincorporated Florida partnership having as its general partners Denis Wyman and Paul von
16 Mohr, both citizens of the United States.

17 10. Upon information and belief, on December 19, 2005, Spin Master Ltd. (hereinafter,
18 “Spin Master”), a Canadian corporation, filed U.S. Trademark Application 78/776427 for the
19 mark ROCKET FISHING ROD for fishing rods in International Class 28.

20 11. Said U.S. Application 78/776427 filed by Spin Master claimed a filing basis under
21 Section 44(d) of the Trademark Act, claiming priority of Canadian Trademark Application
22 1,281,302 (filed November 30, 2005) for the mark ROCKET FISHING ROD for fishing rods.

23 12. Said U.S. Application 78/776427 filed by Spin Master also claimed a filing basis
24 under Section 1(b) (“intent-to-use”) of the Trademark Act, alleging a *bona fide* intention to use

1 the mark ROCKET FISHING ROD in commerce for fishing rods.

2 13. Upon information and belief, said Wyman von Mohr & Associates, by an alleged
3 assignment from Spin Master dated April 12, 2006, and recorded in the Assignment Branch of
4 the U.S. Patent and Trademark Office on October 23, 2006, at Reel/Frame 3414/0127, was
5 assigned said U.S. Application 78/776427.

6 14. By an Amendment filed in the U.S. Patent and Trademark Office on October 24,
7 2007, said Wyman von Mohr & Associates, by and through its attorney of record, deleted said
8 Section 44(d) filing basis for said U.S. Application 78/776427, leaving only said Section 1(b)
9 (“intent-to-use”) filing basis for said U.S. Application 78/776427.

10 15. On June 27, 2008, said Wyman von Mohr & Associates, by and through its attorney
11 of record, filed a Statement of Use for said U.S. Application 78/776427, alleging a date of first
12 use and first use in commerce for the mark ROCKET FISHING ROD of at least as early as
13 November 14, 2006.

14 16. Said alleged date of first use and first use in commerce of November 14, 2006, is
15 subsequent to said alleged assignment on April 12, 2006, of said intent-to-use U.S. Application
16 78/776427 from Spin Master to said Wyman von Mohr & Associates.

17 17. On September 9, 2008, the U.S. Patent and Trademark Office issued U.S.
18 Trademark Registration 3,500,147 to Registrant, Wyman von Mohr & Associates, for the mark
19 ROCKET FISHING ROD for fishing rods in International Class 28.

20 18. Upon information and belief, Registrant cannot show an actual date of first use
21 anywhere for the mark ROCKET FISHING ROD on or in connection with fishing rods earlier
22 than said alleged date of first use and first use in commerce of November 14, 2006.

23 19. Upon information and belief, Registrant cannot show an actual or constructive date
24 of first use in commerce anywhere for the mark ROCKET FISHING ROD on or in connection

1 with fishing rods prior to December 19, 2005.

2 20. Upon information and belief, Registrant cannot show an actual or constructive date
3 of first use in commerce anywhere for the mark ROCKET FISHING ROD on or in connection
4 with fishing rods prior to June 26, 2001.

5 21. Upon information and belief, Registrant cannot show an actual or constructive date
6 of first use in commerce anywhere for the mark ROCKET FISHING ROD on or in connection
7 with fishing rods prior to August 1, 1999.

8 22. Petitioner's actual date of first use and first use in commerce of July 31, 1999, for
9 its mark ROCKET SHAD for fishing lures is earlier than any date of first use and first use in
10 commerce that Registrant can show for its mark ROCKET FISHING ROD for fishing rods.

11 23. Fishing lures and fishing rods are sold in the same channels of trade.

12 24. Fishing lures and fishing rods are used together by those who fish for sport and by
13 those who purchase goods for sport fishing.

14 25. Fishing lures and fishing rods are related goods.

15 26. On June 2, 2010, the U.S. Patent and Trademark Office determined, during the
16 prosecution of Petitioner's said U.S. Application 77/944567, that fishing lures and fishing rods
17 are related goods.

18 27. On June 2, 2010, the U.S. Patent and Trademark Office determined, during the
19 prosecution of Petitioner's said U.S. Application 77/944567, that the marks ROCKET SHAD
20 and ROCKET FISHING ROD are similar.

21 28. On June 2, 2010, the U.S. Patent and Trademark Office determined, during the
22 prosecution of Petitioner's said U.S. Application 77/944567, that there is a likelihood of
23 confusion between the mark ROCKET SHAD, when used by Petitioner for fishing lures, and the
24 mark ROCKET FISHING ROD, when used by Registrant for fishing rods.

1 29. Petitioner's said U.S. Application 77/944567 for the mark ROCKET SHAD for
2 fishing lures has been refused registration by the U.S. Patent and Trademark Office in view of
3 Registrant's said U.S. Registration 3,500,147 for the mark ROCKET FISHING ROD for fishing
4 rods.

5 30. Upon information and belief, Petitioner has priority of use in commerce of the mark
6 ROCKET SHAD for fishing lures over the earliest date of use that can be shown by Registrant
7 for the mark ROCKET FISHING ROD for any goods.

8 31. Upon information and belief, purchasers and prospective purchasers of Registrant's
9 fishing rods branded with the mark ROCKET FISHING ROD are likely to be confused in view
10 of use of the mark ROCKET SHAD by Petitioner for fishing lures.

11 32. Upon information and belief, purchasers and prospective purchasers of Registrant's
12 fishing rods branded with the mark ROCKET FISHING ROD are likely to be confused as to
13 association of Registrant with Petitioner, and/or of Petitioner with Registrant.

14 33. Upon information and belief according to the U.S. Patent and Trademark Office,
15 purchasers and prospective purchasers of Petitioner's fishing lures branded with the mark
16 ROCKET SHAD are likely to be confused in view of use of the mark ROCKET FISHING ROD
17 by Registrant for fishing rods.

18 WHEREFORE, Petitioner, Strike King Lure Company, deems that it is or will be
19 damaged by Registration No. 3,500,147, and prays that this Petition for Cancellation be
20 sustained in favor of Petitioner.

21 The requisite filing fee of \$300.00 for this Petition for Cancellation is being filed
22 herewith by Electronic Funds Transfer, and the Commissioner is hereby authorized to charge any
23 additional filing fees for the filing of this Petition for Cancellation, and credit any overpayment,

1 to Deposit Account 23-0125.

Respectfully submitted,

STRIKE KING LURE COMPANY,
Petitioner

Date: December 2, 2010

COUNSEL FOR PETITIONER:

Russell H. Walker

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Tel. No. (901) 685-7428
Fax No. (901) 682-6488

By: /Russell H. Walker/

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Attorney for Petitioner

*Certificate of Mailing and of Electronic Filing
under 37 C.F.R. § 2.197 (formerly 37 C.F.R. § 1.8)*

I hereby certify that the foregoing Petition for Cancellation, together with the requisite filing fee of \$300.00 being concurrently paid by Electronic Funds Transfer, is being electronically submitted by me via the Internet to the Trademark Trial and Appeal Board of the U.S. Patent and Trademark Office using the ESTTA Electronic Filing System on December 2, 2010, and that a copy of the foregoing Petition for Cancellation is being deposited with the United States Postal Service as U.S. First Class Mail, postage prepaid, on December 2, 2010 in an envelope addressed to the attorney of record for Registrant:

Edward M. Weisz, Esq.
Cohen, Pontani, Lieberman & Pavane, LLP
551 Fifth Ave., Suite 1210
New York, NY 10176-0091

and that a copy of the foregoing Petition for Cancellation is also being deposited with the United States Postal Service as U.S. First Class Mail, postage prepaid, on December 2, 2010 in an envelope addressed to the Registrant:

Wyman von Mohr & Associates
Attn.: Denis Wyman and Paul von Mohr
4727 Yachtsman's Drive
Amelia Island, FL 32034

Electronic Signature of Person Transmitting:	/Russell H. Walker/
Typed Name of Person Transmitting:	Russell H. Walker
	U.S.P.T.O. Registration No. 35,401
Electronic Signature of Person Mailing:	/Russell H. Walker/
Typed Name of Person Mailing:	Russell H. Walker
	U.S.P.T.O. Registration No. 35,401